

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN ART FOUNDATION LIMITED,

PLAINTIFF,

-AGAINST-

MICHAEL MCKENZIE D/B/A AMERICAN IMAGE ART,

DEFENDANT.

Case No. 1:18-cv-04438-AT-BCM

DECLARATION OF LUKE NIKAS

I, Luke Nikas, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Plaintiff. I submit this declaration in support of Plaintiff Morgan Art Foundation's ("MAF") Motion for Terminating Sanctions Against Defendant Michael McKenzie. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to them.

2. In Spring 2021, attorneys for MAF and McKenzie engaged in settlement discussions. As part of those discussions, I learned that McKenzie possessed several Indiana artworks. This information was directly contrary to the testimony McKenzie gave at the Maine probate proceeding and the representations his attorneys at the Dunnington and Goetz firms had made to my firm during the course of discovery. I therefore obtained permission from McKenzie's counsel to inspect the artworks in McKenzie's possession.

3. I visited McKenzie's property on May 25, 2021, to inspect the artworks in his possession. I was joined by my clients, a team of professional art handlers, and Donn Zaretsky, counsel for Star of Hope, Inc. We were met at McKenzie's property by Markham and two of

McKenzie's employees, Osvaldo Gonzalez and Annette Vessecchia. We were shown to McKenzie's two-floor studio, where we were specifically told that all of the Indiana artwork in McKenzie's possession was located. None of McKenzie's staff ever said or implied that artwork was located in other buildings on the property or in other locations on the property, and we had no reason to know that artwork was located anywhere other than the studio.

4. As a result of the Court's June 29, 2021 Order (ECF No. 395) and the July 21, 2021 Stipulation and Order (ECF No. 408), I returned to McKenzie's property on August 5, 2021. The Court order and the joint stipulation permitted my team to enter into McKenzie's studio to photograph all relevant documents, including artwork. At that point, I believed that we had already seen all artwork in McKenzie's possession—a belief that was based on McKenzie's misrepresentations. It was nevertheless important to me that my team be permitted to photograph artwork on the property. To that end, I told Markham in an email dated July 20, 2021, that I did not want to be precluded from photographing artwork during the inspection. A true and correct copy of that email is attached as Exhibit 5. McKenzie ultimately consented to that request, and the Court's July 21, 2021 order reflects and orders this agreement.

5. During the visit to McKenzie's studio, we located 5,913 pages of relevant documents that McKenzie had previously failed to produce and had falsely represented to the Court and MAF's counsel were not in his possession.

6. Three weeks after the Court-ordered inspection, I received a communication from Osvaldo Gonzalez. He told me that McKenzie had hidden numerous artworks from me and my team when we were on the property and that McKenzie had also removed several truckloads of artworks from his property after the Court ordered McKenzie to permit MAF's inspection. Gonzalez further informed me that McKenzie continues to forge Robert Indiana artworks.

Gonzalez said he witnessed McKenzie stamping Indiana's signature on newly created artworks and selling the forged works, and he stated that evidence of these activities exists at McKenzie's property and had been concealed from MAF. After this conversation, I spoke with McKenzie's counsel, who told me that he had received a similar call from Gonzalez and planned to bring it to the Court's attention. I did not know that any artworks had been removed from McKenzie's property or concealed from me while we were on the property until Gonzalez contacted me with this information. Gonzales later recorded his testimony about these matters in a declaration dated August 31, 2021, which is attached as Exhibit 46.

7. Attached as Exhibit 1 is a true and accurate copy of a transcript of the deposition of Michael McKenzie that was taken on September 10, 2021.

8. Attached as Exhibit 2 is a true and accurate copy of a transcript of the deposition of Annette Vessecchia that was taken on November 3, 2021.

9. Attached as Exhibit 3 is a true and accurate copy of a transcript of the deposition of Gregory Allen that was taken on November 5, 2021.

10. Attached as Exhibit 4 is a true and accurate copy of a transcript of the deposition of Timothy Ginexi that was taken on November 9, 2021.

11. Attached as Exhibit 5 is a true and accurate copy of email correspondence between myself and John Markham on July 20, 2021.

12. Attached as Exhibits 6 through 42 are true and accurate copies of photographs taken during MAF's May 25, 2021 visit to McKenzie's studio.

13. Attached as Exhibits 43 and 44 are true and accurate copies of diagrams of McKenzie's property prepared by Annette Vessecchia during her deposition on November 3, 2021.

14. Attached as Exhibit 45 is a true and accurate copy of a photograph sent to me by Osvaldo Gonzalez, produced with the bates stamp MAF0060242.

15. Attached as Exhibit 46 is a true and accurate copy of the Declaration of Osvaldo Gonzalez, dated August 31, 2021.

16. Attached as Exhibit 47 is a true and accurate copy of an email from Osvaldo Gonzalez to Bridget Zerner, dated August 25, 2021, produced at MRZ00146-152.

17. Attached as Exhibit 48 is a true and accurate copy of a photograph sent to me by Osvaldo Gonzalez, produced in this litigation as MAF0060248.

18. Attached as Exhibit 49 is a true and accurate copy of a photograph sent to me by Osvaldo Gonzalez, produced in this litigation as MAF0060250.

19. Attached as Exhibit 50 is a true and accurate copy of a photograph sent to me by Osvaldo Gonzalez, produced in this litigation as MAF0060230.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 10, 2021.

/s/ Luke Nikas
Luke Nikas